



being harassed by a supervisor, “Duke Parker,”<sup>1</sup> alleging that he wanted her to do more work than anyone else and “also talks to me any kind of way.” She alleged retaliation for a prior Equal Employment Opportunity (EEO) complaint. Appellant also submitted a September 25, 2003 disability slip in which Dr. Mustansir Majeed, a Board-certified family practitioner, advised that she could return to work on September 26, 2003 with a 30-pound lifting restriction. In a February 18, 2004 report, Dr. Pedro Ranola, Board-certified in family practice and an associate of Dr. Majeed, diagnosed depression, anxiety and work-related stress.

By letter dated May 11, 2004, the Office advised appellant of the evidence needed to support her claim. On May 12, 2004 the employing establishment controverted the claim, nothing that appellant had been a 90-day casual employee who had been hired for terms dating from January 1 to April 1, June 30 to September 20 and September 27 to December 25, 2003 and January 4 to February 19, 2004, when she was terminated for failure to follow instructions and for taking unauthorized breaks.

Appellant submitted an undated statement noting that she had submitted an EEO complaint and had been “put under a lot of stress.” Appellant alleged that, at times, she had to do two to four jobs, which others were not required to do that she performed mail handler and clerk work when others did not, that there were times when the equipment did not work, which caused the mail to be late, and that her hours were unfairly cut.

She also submitted form treatment notes dated July 1, 2003 to January 9, 2004 from Dr. Majeed, who noted that appellant had multiple complaints and diagnosed backache. In a treatment note dated February 18, 2004, Dr. Ranola noted appellant’s complaint that she was unfairly treated at work. He diagnosed depression, stress and anxiety.

By letters dated August 24, 2004, the Office requested the employing establishment to respond to appellant’s allegations and informed her that she needed to submit a comprehensive medical report to support her claim. Appellant submitted reports dated September 1 and 3, 2004 in which Drs. Ranola and Majeed reiterated their prior diagnoses. She was referred to a back specialist and a psychiatrist.

In a report dated September 13, 2004, Dr. Raj Rao, Board-certified in orthopedic surgery, noted examination findings and diagnosed low back pain with some suggestion of left-sided L5 radiculopathy. He ordered a lumbar spine magnetic resonance imaging (MRI) scan, which was performed on September 22, 2004. Dr. Scott Rand, a Board-certified radiologist, read the MRI scan as demonstrating a mild L4-5 disc bulge with a posterior annular tear and a mild L5-S1 disc bulge with a tiny central disc herniation. In a September 27, 2004 report, Dr. Rao noted MRI scan findings of mild degenerative discs at L4-5 and L5-S1 and opined that the bulk of appellant’s pain was of muscular origin. He recommended light duty.

On November 4, 2004 Mr. Kaiser indicated that Mr. Park’s English was not always clear and that he worked hard to ensure that he was understood. Mr. Kaiser stated that no one was assigned to do more than one job at a time but that it was normal for the jobs of all casual employees, including appellant, to change several times a night. This could include doing both

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<sup>1</sup> The record indicates that the supervisor’s correct name is Duk Park.

clerical and mail handler work. He agreed that there were equipment failures and advised that there was no guarantee of hours or light duty for casual employees. He had no knowledge of any prior EEO complaint activity and had never witnessed Mr. Park treat appellant differently than any other employee.

In treatment notes dated October 27 to December 13, 2004, Dr. Kendall Brown, a psychiatrist, noted that appellant had filed an EEO complaint and diagnosed “MDD, atypical” and recommended medication and continued psychotherapy.<sup>2</sup>

By letter dated December 16, 2004, the Office requested that Dr. Rao provide information regarding appellant’s back condition. On January 19, 2005 it referred her, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Harold H. Harsch, a Board-certified psychiatrist. The statement of accepted facts noted that the Office accepted as a compensable factor of employment that the equipment needed by appellant to perform her work duties was not always available.

In a report dated February 23, 2005, Dr. Harsch reviewed appellant’s work history and her complaints of depression, difficulty sleeping and decreased interest in activities. She reported “difficulties” with Mr. Park, stating that she had an altercation with him on February 10, 2004 and was terminated the next day. Dr. Harsch diagnosed depression and chronic low back pain. He advised:

“In the statement of accepted facts from the claims examiner, there is no mention of the altercation with the supervisor but there is mention with regards to equipment not being always available. The patient did not spontaneously report this as a problem and clearly identifies her interactions with the supervisor as causing the stress, not the fact that sometimes materials were not available. Given that, it is difficult to correlate anything the patient reports as psychiatric symptoms to the accepted facts in this case.”

Appellant submitted a March 4, 2005 treatment note in which Dr. Robert E. Kettler, a Board-certified anesthesiologist, diagnosed low back pain radiating to the left hip and recommended epidural injection.

By decision dated March 14, 2005, the Office denied appellant’s claim, finding that the medical evidence of record did not support that her claimed emotional condition was caused by the accepted factor of employment. On March 28, 2005 appellant requested a review of the written record. She submitted a July 7, 2005 report in which Dr. Rao diagnosed musculoligamentous low back pain and mild degenerative lumbar discs at L4-5 and L5-S1. A lumbar spine x-ray was reported negative.

In a decision dated September 20, 2005, an Office hearing representative affirmed the March 14, 2005 decision, finding the medical evidence insufficient to establish that appellant’s back or emotional conditions were causally related to factors of her federal employment.

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<sup>2</sup> “MDD” is apparently major depressive disorder.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>3</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>4</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

In this case, appellant provided no statement regarding the employment factors that she believed caused her back condition, other than to generally allege it was due to work-related stress. The medical evidence of record is insufficient to establish that she sustained a back condition causally related to factors of her federal employment. The medical evidence consists primarily of several treatment records in which Dr. Majeed tested backache. An MRI scan demonstrated disc bulges at L4-5 and L5-S1 and Dr. Rao, an orthopedic surgeon, diagnosed mild degenerative disease and opined that appellant's back pain was primarily of musculoligamentous origin. None of these reports, however, contained an opinion regarding the cause of appellant's back condition or which relates the diagnosis to any factor of her federal employment. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>7</sup> The

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<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>6</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>7</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

Board finds that appellant has failed to establish that her back condition was caused or aggravated by her employment.<sup>8</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

To establish that she sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>9</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>10</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>11</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>12</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from his or her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.<sup>13</sup> As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.<sup>14</sup> However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>15</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced, which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of

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<sup>8</sup> *Leslie C. Moore*, *supra* note 5.

<sup>9</sup> *Id.*

<sup>10</sup> 28 ECAB 125 (1976).

<sup>11</sup> 5 U.S.C. §§ 8101-8193.

<sup>12</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

<sup>13</sup> *Lillian Cutler*, *supra* note 10.

<sup>14</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>15</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence<sup>16</sup>

### ANALYSIS -- ISSUE 2

The Board finds that appellant has failed to establish that her emotional condition was causally related to factors of her federal employment. The Office accepted as a compensable factor that appellant did not have the proper equipment to perform her job duties.

Regarding her contention that she was required to do more work than other employees, both clerical and as a mail handler, the assignment of work duties is an administrative function of the employing establishment and is not compensable absent error or abuse.<sup>17</sup> This would not be a compensable factor of employment. While the Board has held that overwork, when substantiated by sufficient factual information to support the claimant's account of events, may be a compensable factor of employment,<sup>18</sup> in this case appellant submitted no evidence to show that she was improperly assigned tasks or overworked. Mr. Kaiser explained that casual workers, like appellant, performed both mail handler and clerical duties and were required to perform more than one job function within a work shift. Appellant failed to establish a compensable factor of employment in regard to these administrative matters.<sup>19</sup> Similarly, the mere fact that appellant filed an EEO complaint does not constitute evidence of error or abuse by the employing establishment. Appellant submitted insufficient evidence to substantiate her allegation of retaliation.<sup>20</sup>

Appellant generally alleged that she was harassed by Mr. Park. The mere disagreement or dislike of a supervisory or management action is not compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.<sup>21</sup> A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive.<sup>22</sup> Appellant submitted insufficient evidence to establish that she was treated in an inappropriate manner by Mr. Park. Mr. Kaiser advised that he did not witness Mr. Park treating appellant in a disparate manner. Appellant has failed to establish harassment as a compensable factor of employment.

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<sup>16</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>17</sup> *See Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>18</sup> *Bobbie D. Daly*, 53 ECAB 691 (2002).

<sup>19</sup> *Roger Williams*, *supra* note 14.

<sup>20</sup> *See Michael A. Salvato*, 53 ECAB 666 (2002).

<sup>21</sup> *Judy L. Kahn*, 53 ECAB 321 (2002).

<sup>22</sup> *Michael A. Deas*, 53 ECAB 208 (2001).

As appellant established one compensable factor of employment, *i.e.*, that at times she was not furnished with appropriate equipment, the medical evidence must be analyzed.<sup>23</sup> The Board finds the medical evidence of record insufficient to establish that her emotional condition was caused by her federal employment. Dr. Ranola and Dr. Brown both noted appellant's report of problems at work and diagnosed depression. However, neither physician addressed the accepted factor that the equipment would be unavailable. Moreover, neither physician addressed the cause of appellant's condition. As stated above, medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>24</sup>

Dr. Harsch provided a second opinion evaluation for the Office. He reviewed the statement of accepted facts, including the accepted employment factor, medical records and appellant's complaints of job-related harassment. He diagnosed depression and advised that this was not related to the accepted employment factor, noting that appellant clearly identified her stress as arising from her interactions with her supervisor. The Board has carefully reviewed Dr. Harsch's opinion and finds it to have reliability, probative value and convincing quality with respect to his finding that appellant's emotional condition was not causally related to the compensable factor of employment. The Board therefore finds that appellant failed to meet her burden of proof to establish that her emotional condition is employment related.<sup>25</sup>

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained either a physical or an emotional condition in the performance of duty causally related to factors of employment.

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<sup>23</sup> See *Dennis J. Balogh*, *supra* note 15.

<sup>24</sup> *Willie M. Miller*, *supra* note 7.

<sup>25</sup> *Leslie C. Moore*, *supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 20, 2005 be affirmed.

Issued: February 2, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board